

2014 IL App (1st) 132954-U
Nos. 1-13-2954, 1-13-2955 & 1-13-2956 (Cons.)
September 16, 2014

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RIDGEWOOD HIGH SCHOOL DISTRICT NO.)	Appeal from the Illinois Property Tax
234, NORRIDGE SCHOOL DISTRICT NO. 80,)	Appeal Board
NORRIDGE PARK DISTRICT, NORWOOD)	
PARK FIRE PROTECTION DISTRICT)	
and EISENHOWER PUBLIC LIBRARY)	Nos. 07-24399.001-C-3 through
DISTRICT,)	07-24399.002-C-3
)	
Petitioners-Appellants,)	08-20465.001-C-3 through
)	08-20465.002-C-3
v.)	
)	09-20535.001-C-3 through
ILLINOIS PROPERTY TAX APPEAL BOARD)	09-20535.002-C-3
and TARGET CORPORATION,)	
)	
Respondents-Appellees.)	

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* When a property owner appeals from an assessment of the property for tax purposes, and produces sufficient evidence or argument to challenge the correctness of the initial assessment, the Property Tax Appeal Board must determine the correct assessment for the property in light of all the evidence concerning the valuation. The PTAB has authority to grant the property owner partial relief, even when the PTAB finds the evidence produced by the taxing bodies more relevant and persuasive than the property owner's evidence.

¶ 2 Target Corporation appealed the Cook County Assessor's assessment of the value of some real estate Target owned. Several taxing bodies intervened in the appeal. Both Target and the intervenors presented evidence concerning the value of the property. The Property Tax Appeal Board (PTAB) granted Target part of the relief it sought, even though the PTAB based its valuation of the property primarily on evidence the intervenors presented. On this appeal, the intervenors argue that the PTAB violated the Administrative Code and shifted the burden of proof to the intervenors. We reject both arguments and affirm the PTAB's orders.

¶ 3 BACKGROUND

¶ 4 Target owned a store, a parking garage, and land in Norridge, Illinois. The Cook County Assessor's Office informed Target that the assessor found that Target's property in Norridge had a total market value of \$21,254,499 in 2007. The assessment multiplier made the assessed value of the property \$8,076,710. Target asked the Cook Board of Review of Review (Board of Review) to reduce the assessed value. The Board of Review found that the property had a fair market value of \$15,738,924, which worked out to an assessed value of \$5,980,791. In June 2008, Target appealed the assessment further to the PTAB. The assessor's office and the Board of Review assessed the property again for 2008 and 2009 pending proceedings on the appeal concerning the 2007 assessment. The Board of Review held that the assessed value for 2008 remained \$5,980,791, and the fair market value for 2009 remained almost the same as the 2007 and 2008 fair market value. The Board of Review put the fair market value for 2009 at \$15,738,908, but with the new multiplier the county adopted, the assessed value of the property fell to \$3,934,727. Target also filed appeals to the PTAB concerning the 2008 and 2009 assessments. The PTAB consolidated the appeals.

¶ 5 The PTAB permitted Ridgewood High School District No. 234, Norridge School District No. 80, Norridge Park District, Norwood Park Fire Protection District, and Eisenhower Public Library (collectively, intervenors) to intervene in proceedings concerning the three tax years. All of the intervenors collected taxes from Target for the three years at issue.

¶ 6 The PTAB held hearings in 2013 on Target's appeal. Target relied primarily on a report its expert, Joseph Thouvenell, presented. Thouvenell, a real estate appraiser, used three methods for valuing the property. He found that the cost approach valued the property at \$12,400,000, and the income capitalization approach yielded an estimated value of \$12,800,000. Thouvenell relied mostly on the sales comparison approach, and he found five specified sales of developed commercial properties especially comparable. The comparable sales ranged from about \$49 per square foot to \$82 per square foot. He estimated the value of Target's store at \$75 per square foot, which worked out to a total value of \$13,100,000. He reconciled the three valuations, and found that the property had a fair market value of \$13,000,000. He recommended that the PTAB reduce the property's assessed value for 2007 and 2008 to \$4,940,000, which is about 17% less than the assessed value the Board of Review found. Thouvenell's valuation would also reduce the assessed value for 2009 by about 17%.

¶ 7 The intervenors countered with their own real estate appraiser, Dale Kleszynski, who used the same three methods to estimate the property's value. The cost approach showed an estimated value of \$16,000,000, and the income capitalization approach led to an estimated value of \$16,400,000. Like Thouvenell, Kleszynski relied mostly on the sales comparison approach, and he found five specific sales of developed commercial properties especially comparable. The properties sold for prices ranging from \$65 to over \$152 per square foot.

Kleszynski also found that Target's property could sell for \$75 per square foot, but because he added the value of the parking garage separately, he found the sales comparison approach led to an estimated property value of \$16,500,000. Kleszynski valued the parking garage based on the cost of its construction, diminished by depreciation. Relying on Kleszynski's report, intervenors asked the PTAB to increase the assessed value of Target's property by about 5%.

¶ 8 The PTAB found significant problems with the reports of both Thouvenell and Kleszynski. The PTAB decided to give little weight to the conclusions both appraisers reached using the cost method and the income valuation approach. The PTAB agreed with Thouvenell's "methodology of including the value of the parking garage within the estimate of value based on the sales," and the PTAB rejected Kleszynski's method of adding in a separate, cost-based value for the parking garage. But the PTAB found that Thouvenell misstated the land to building ratio by failing to take into account the several levels of the parking garage, which increased the effective area of the property outside of the store.

¶ 9 The PTAB detailed its use of the five sales Thouvenell found comparable and the five sales Kleszynski found comparable. In the order concerning the 2007 assessment, the PTAB said:

"The PTAB finds Thouvenell's sales #2, #3, #4, and #5 were leased fee properties and sold with differing property rights than the subject property. Thouvenell testified he did not make adjustments for this difference in property rights. Sale #1 was not advertised for sale and is the fulfillment of an installment contract from 2003. Therefore, the PTAB gives these Thouvenell's sale comparables diminished weight.

As to Kleszynski's sales comparables, the PTAB gives diminished weight to sale #2 as this property was leased at the time of sale. In addition, sale #3 lists the buyer and seller both as Walmart entities and appears to be related. Therefore, this sale is given diminished weight.

The remaining sales were given significant weight by the PTAB and have unadjusted sales prices ranging from \$65.00 to \$90.97 per square foot of building area, including land. The subject property's assessed value equates to a market value of \$90.00 per square foot of building area, including land which is within the unadjusted range of comparables. After considering adjustments and the differences between the subject and the comparables, the PTAB finds that the subject property had a market value of \$85.00 per square foot of building area or \$14,865,395."

¶ 10 The PTAB found that the property had the same market value for 2008 taxes. According to the PTAB, the property's market value fell to \$80.00 per square foot in 2009, reducing the market value of the property to \$13,990,160. Applying the new multiplier of 25%, the PTAB held that the property had an assessed value of \$3,497,540 for 2009. The PTAB's decision reduced the assessed value for Target's property by about 5.5% for 2007 and 2008, and it reduced the assessed value for 2009 by about 11%, instead of granting Target the 17% reduction it sought for all three years. The intervenors now appeal.

¶ 11 ANALYSIS

¶ 12 The intervenors argue that the PTAB violated the Administrative Code and impermissibly shifted the burden of proof to the intervenors. According to the intervenors,

once the PTAB concluded that it could not rely on Thouvenell's assessment of the property's value, the PTAB had a duty to dismiss the appeal, thereby requiring Target to pay taxes based on the Board of Review's assessment of the property's value. Because intervenors contest only the PTAB's interpretation of the Administrative Code, we review the PTAB's decision *de novo*. *City of St. Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509 (2009).

¶ 13 The Administrative Code provides that any party contesting an assessment has the burden of producing "substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property." 86 Ill. Admin. Code § 1910.63(b). The Code further provides:

"The [PTAB] shall determine the correct assessment *** of any parcel of real property which is the subject of an appeal, based upon facts, evidence, exhibits and briefs submitted to or elicited by the Board.

* * *

The [PTAB] shall consider appeals as hereinafter provided and revise the assessment of any particular parcel of real property when it finds such assessment to be in error.

*** [The PTAB] shall have the power to revise all or any part of the assessment when it finds such assessment or part thereof to be in error." 86 Ill. Admin. Code § 1910.10(b), (d), (e).

"When market value is the basis of the appeal, the value of the subject property must be proved by a preponderance of the evidence." 86 Ill. Admin. Code § 1910.63(e).

¶ 14 The intervenors do not deny that Target met its burden of production by presenting Thouvenell's report, with its assessment of the property value as \$13,000,000. According to the Administrative Code, once Target met its burden of production, the PTAB had a duty to "determine the correct assessment *** of [the] real property which is the subject of [the] appeal" and "revise the assessment *** [if] it finds such assessment to be in error." 86 Ill. Admin. Code § 1910.10(b), (d). For the PTAB's assessment, "the value of the subject property must be proved by a preponderance of the evidence." 86 Ill. Admin. Code § 1910.63(e); see *Minooka Community High School Dist. No. 111 v. Illinois Property Tax Appeal Board*, 397 Ill. App. 3d 823, 828-29 (2010). Intervenors interpret the rule to mean that if the party challenging the assessment fails to persuade the PTAB that the party's expert has proven the correct assessment, the PTAB must not grant that party any relief from the challenged assessment.

¶ 15 The appellate court addressed a similar interpretation of the Administrative Code in *Kraft Foods, Inc. v. Illinois Property Tax Appeal Board*, 2013 IL App (2d) 121031. In that case, Kraft argued that the PTAB erred when it used, to some extent, comparable sales presented by appraisers from both parties before the PTAB, "in essence creating its own appraisal" of the property. *Kraft Foods*, 2013 IL App (2d) 121031, ¶ 45. Kraft argued that the Administrative Code required the PTAB "to weigh the evidence and then decide which party has presented the more compelling evidence," and grant that party in full the relief it requested. *Kraft Foods*, 2013 IL App (2d) 121031, ¶ 45.

¶ 16 The *Kraft Foods* court held, "it was not inherently improper for the PTAB to credit some of the evidence that both parties presented." *Kraft Foods*, 2013 IL App (2d) 121031, ¶ 47. The court cited several cases in which the PTAB rejected in part the assessments of both

parties, and instead found that the evidence as a whole supported an assessed value neither party advocated. *Kraft Foods*, 2013 IL App (2d) 121031, ¶ 47, citing *Kankakee Board of Review of Review v. Property Tax Appeal Board*, 2012 IL App (3d) 110045, ¶¶ 6, 8, 10; *Kendall Board of Review of Review v. Property Tax Appeal Board*, 337 Ill. App. 3d 735, 739 (2003); *Board of Education of Meridian Community Unit School Dist. 223 v. Illinois Property Tax Appeal Board*, 2011 IL App (2d) 100068, ¶¶ 4, 31.

¶ 17 In *Kraft Foods* and the cases cited therein, the PTAB set new assessments and granted the party that filed the appeal partial relief, even though that party failed to persuade the PTAB that its experts correctly assessed the property's value. We cannot reconcile the intervenors' interpretation of the Administrative Code with *Kraft Foods* and the cases the *Kraft Foods* court cited. In *Kraft Foods* and the cases cited therein, the PTAB found that the party challenging the assessment failed to prove the value of the property by a preponderance of the evidence, but the PTAB ordered partial relief nonetheless.

¶ 18 While the PTAB here explicitly relied primarily on comparable sales, and gave "diminished weight" to all five of the sales on which Thouvenell relied, the PTAB did not entirely reject as irrelevant the sales data Thouvenell presented. The PTAB expressly adopted part of Thouvenell's valuation method with respect to the parking garage. The Administrative Code requires the PTAB first to determine whether an appellant has met its burden of providing "substantive, documentary evidence or legal argument sufficient to challenge the correctness of the assessment of the subject property," (86 Ill. Admin. Code § 1910.63(b)) and once the PTAB finds that the appellant has done so, the PTAB must "determine the correct assessment *** [for the property], based upon facts, evidence, exhibits and briefs submitted to or elicited by the Board." 86 Ill. Admin. Code § 1910.10(b). We

hold that the PTAB did not violate the Administrative Code when it awarded Target partial relief, based on all of the evidence, including intervenors' exhibits. We also agree with the PTAB that it never shifted the burden of proof to intervenors. Instead, the PTAB applied the standard it found in the Administrative Code, which required the PTAB to reach a correct assessment for the property, based upon the facts, evidence, exhibits and briefs the parties presented.

¶ 19

CONCLUSION

¶ 20

The PTAB did not violate the Administrative Code or shift the burden of proof when it relied mostly on comparable sales intervenors presented as a basis for assessing Target's property, even though the PTAB reduced the assessment the Board of Review originally imposed, thereby granting Target partial relief based largely on intervenors' exhibits. Accordingly, we affirm the PTAB's orders in the three tax appeals Target filed.

¶ 21

Affirmed.